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In the Supreme Court of the United States

OCTOBER TERM, 1992

FLORENCE COUNTY SCHOOL DISTRICT FOUR, ET AL., PETITIONERS

v.

SHANNON CARTER, A MINOR, BY AND THROUGH HER FATHER AND NEXT FRIEND, EMORY D. CARTER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether, after determining that petitioners failed to meet their statutory obligation under the Individuals with Disabilities Education Act (IDEA or Act), 20 U.S.C. 1400 *et seq.* (1988 & Supp. II 1990), to provide respondent Shannon Carter with a "free appropriate public education," the district court had authority to order petitioners to reimburse respondent for the costs of an educational program offered in a private school chosen by her parents that met her educational needs in accordance with the Act's substantive requirements but did not satisfy all of the Act's procedural or definitional criteria.

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INTEREST OF THE UNITED STATES

The Secretary of Education has been charged by Congress with administering the provisions of the Individuals with Disabilities Education Act (IDEA). See, *e.g.*, 20 U.S.C. 1402, 1412-1413 (1988 & Supp. II 1990); 34 C.F.R. Pt. 300. The United States has an interest in the remedies available to parents and disabled children under the Act in the event that a state or local educational agency defaults on its obligations under the Act. The United States filed a brief *amicus curiae* in this case at the petition stage at this Court's invitation.

STATEMENT

1. Congress enacted the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.* (1988 & Supp. II 1990), to assure the availability to all children with disabilities of "a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." Section 1400(c). Congress sought to "assist States and localities to provide for education of all children with disabilities," *ibid.*, by offering financial assistance to the States in exchange for the States' agreement to comply with federal statutory standards and procedures. Sections 1411-1415, 1420.

To qualify for federal financial assistance under IDEA, a State must demonstrate that it "has in effect a policy that assures all children with disabilities the right to a free appropriate public education." 20 U.S.C. 1412(1) (Supp. II 1990). See Section 1401(a)(18) (*reprinted at* Pet. App. 56a) (setting forth the criteria for the "free appropriate public education" that the State must provide, including the requirement that it "meet the standards of the State educational agency"). The State must formulate a plan, approved by the Secretary of Education, that describes the goals, programs, and timetables under which the State intends to educate children with disabilities within its jurisdiction. Sections 1412, 1413.[1] At the local level, IDEA requires the pertinent public education authority to prepare and review annually an "individualized education program" (IEP) for each child with disabilities. 20 U.S.C. 1401(a)(18) and (20), 1414(a)(5) (1988 & Supp. II 1990).[2] As this Court has noted, the IEP is the "centerpiece of [IDEA's] education delivery system for disabled children." *Honig* v. *Doe*, 484 U.S. 305, 311 (1988). The IEP describes the individualized instruction and services that the local educational agency (LEA) will provide to disabled children, and sets goals for educational achievement. Sections 1401(a)(18) and (20), 1414(a)(5).[3]

2. In 1982 and 1983, respondent Shannon Carter was a student in the seventh grade at the Timmonsville public school operated by petitioner Florence County School District Four.[4] Pet. App. 3a, 24a. On May 1, 1985, after Shannon was classified by the school district as learning disabled under South Carolina State Department

[1] Among other things, the State must demonstrate that, "to the maximum extent appropriate," it will educate children with disabilities "with children who are not disabled," unless "the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." Section 1412(5)(B). This has come to be known as the "mainstreaming" requirement.

[2] We note that the criteria for IEP plans that were in effect at the time respondent filed suit in 1986 were codified at Section 1401(a)(19). In 1990, that provision was amended to add additional requirements and redesignated as Section 1401(a)(20). For purposes of consistency with petitioners' brief, we cite throughout to Section 1401(a)(20).

[3] An IEP is developed jointly by school personnel, the parents of the disabled child, and, where appropriate, the child himself. The IEP ordinarily includes a statement of the child's present levels of educational performance, the annual educational goals (including short-term instructional objectives), the specific educational services to be provided, and the criteria and evaluation procedures for determining, on an annual basis, whether instructional objectives are being achieved. Section 1401(a)(20). The LEA must provide for yearly review of the IEP, and must make appropriate revisions in the plan, if necessary. Section 1414(a)(5).

In addition to establishing detailed requirements for the IEP, IDEA also grants parents or guardians of children with disabilities certain procedural rights with regard to decisions concerning the child's education, including the right to examine relevant records, the right to a hearing before the LEA and review of the agency's decision by the State, and the right to challenge the State's decision in a civil action in either state or federal court. See Section 1415.

[4] After attending Timmonsville Elementary School for the first grade, Shannon apparently attended the Roy Hudgens Academy, a private school, for grades two through six. Pet. App. 3a, 23a.

of Education (SDE) criteria, see Pet. App. 4a, 25a, school personnel held a meeting with Shannon's parents to formulate an IEP for Shannon. The school district proposed that Shannon remain in regular classes but spend at least two hours daily in the "resource room." Shannon's parents objected to this plan because it would require Shannon to attend classes with severely disturbed children. Instead, her parents proposed an "itinerant" program under which Shannon would remain in regular classes but receive individualized instruction for three periods per week. An IEP was prepared based on this program, was signed by the school district and Shannon's parents, and became effective on May 2, 1985. The IEP established goals in reading and mathematics of four months' progress for the entire school year. *Id.* at 4a-5a, 26a-27a.

Dissatisfied with the IEP, Shannon's parents requested a hearing to challenge the school district's educational program.[5] Pet. App. 5a, 28a. On August 20, 1985, a local educational hearing officer concluded that petitioners were providing an adequate academic program for Shannon. *Id.* at 44a-54a. That conclusion was upheld on review by the South Carolina SDE. *Id.* at 40a-43a. In the meantime, Shannon's parents placed her at the Trident Academy in Mt. Pleasant, South Carolina, a private academy specializing in the education of children with disabilities. Shannon began courses at Trident in September 1985 and graduated from that institution in the spring of 1988. *Id.* at 5a, 28a. Shannon's parents did not seek approval for Shannon's placement at Trident from either local education officials or the South Carolina SDE. *Id.* at 5a.

3. In July 1986, Shannon's parents filed this suit on her behalf, claiming that petitioners breached their duty

[5] The district court commented that, although Shannon's parents signed the IEP, they clearly "were not satisfied with the plan." Pet. App. 27a n.8. It found that, since an IEP "is not a binding contract," and can be challenged by the parents at any time, the fact that the parents signed the document was irrelevant to the dispute concerning the adequacy of the IEP. *Ibid.*

under IDEA to provide Shannon with a "free appropriate public education." Pet. App. 6a. See Section 1412(1); Section 1401(a)(18). The complaint also sought reimbursement for tuition and other costs incurred at Trident under this Court's decision in *School Committee of Burlington* v. *Department of Educ.*, 471 U.S. 359 (1985) (*Burlington*). After a three-day bench trial, the district court ruled that the school district had violated IDEA. Pet. App. 20a-39a. The court determined that the school district's proposed program and the achievement goals set by the IEP "were wholly inadequate," and failed to satisfy the minimum requirements of the Act. *Id.* at 27a, 36a.

The district court also found that, "[a]lthough [Trident Academy] did not comply with all of the procedures outlined in [IDEA]," [6] the school provided Shannon an excellent education in substantial compliance with all the substantive requirements" of the statute. Pet. App. 37a.[7]

[6] The court did not elaborate on the "procedures" with which Trident failed to comply. However, the court elsewhere noted that the school had "not been approved" by the South Carolina SDE as an appropriate placement for children with disabilities, Pet. App. 37a, and that it would not likely be eligible for approval because it failed to meet the state requirement that it employ only certified teachers. *Id.* at 28a n.10. See also *id.* at 11a-12a (court of appeals' observation that Trident "does not, for example, develop education[al] plans called IEPs," and that it employs "at least two faculty members" who are not "certified by the state"); *id.* at 62a-71a (South Carolina regulations setting forth educational requirements for certification of teachers of children with disabilities). See Pet. Br. 13-14.

[7] The court stated that Trident "evaluated Shannon quarterly, not yearly as mandated in the [Act], it provided Shannon with low teacher-student ratios, and it developed a plan which allowed Shannon to receive passing marks and progress from grade to grade." Pet. App. 37a. The court also noted the findings of its own expert, Dr. Richard Nagle, who tested Shannon and found that she had "made significant progress at Trident." *Id.* at 29a, 37a. The court observed that "Shannon entered Trident Academy in the fall

The court awarded respondents $35,716.11 in reimbursement for costs incurred in connection with Shannon's education at Trident, together with prejudgment interest. *Id.* at 21a, 29a-32a, 39a.

4. The court of appeals affirmed. Pet. App. 1a-19a. Observing that the IEP's goal of "four months' progress over a period of more than one year was rather modest" and "failed to satisfy the Act's requirement of more than minimal or trivial progress," the court of appeals upheld the district court's determination that the school district had failed to provide Shannon with a free appropriate public education under the Act. *Id.* at 7a-8a.

The court also upheld the district court's order of reimbursement, rejecting petitioners' argument that reimbursement is authorized under the statute "only when parents place their child in a private school approved by the state." Pet. App. 12a. The court noted that, although Trident's "educational program in many ways parallels" the Act's requirements, Trident "does not attempt to comply with the terms of [IDEA]." [8] *Id.* at 11a. It held, however, that this was not "fatal to the request for reimbursement." *Id.* at 12a. The court observed that the Act's remedial provision—which authorizes the court to "grant such relief as [it] determines is appropriate," 20 U.S.C. 1415(e)(2)—is a "broad grant of equitable power designed to provide courts maximum flexibility in effectuating the statutory objectives." Pet. App. 18a; *id.* at 10a. It explained further that the requirement in Section 1413(a)(4)(B) "that private schools receiving funds under the Act meet state educational standards" applies "only when the child is placed in the private school by the state or local school system." Pet. App. 13a.

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term of 1985 as a functional illiterate." *Id.* at 25a. Dr. Nagle found that, during Shannon's time at Trident, "[h]er reading comprehension had risen from a level of 4.7 in 1985 to 7.8 in 1988." *Id.* at 29a.

[8] See note 6, *supra*.

The court noted that petitioners did not dispute the district court's conclusion that "Trident Academy provided Shannon with an appropriate education, which is a prerequisite to reimbursement under *Burlington*." Pet. App. 10a n.2. Relying on *Board of Educ.* v. *Rowley*, 458 U.S. 176, 207 (1982), the court of appeals held that, "when a public school system has defaulted on its obligations under the Act," reimbursement is available for a private school education that is "reasonably calculated to enable the child to receive educational benefits." Pet. App. 16a-17a. The court rejected the view that the Act "forbids reimbursement when parents place their child in a private school that has not been approved by the state," *id.* at 17a, observing that "[t]he Act itself simply imposes no requirement that the private school be approved by the state in parent-placement reimbursement cases." *Id.* at 13a. The court further explained that "it hardly seems consistent with the Act's goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place." *Id.* at 18a.[9]

5. On February 22, 1993, this Court granted the petition for certiorari, limited to the first question presented, which concerns the remedies available under IDEA when a school district defaults on its statutory obligation to provide a free appropriate public education. J.A. 26.

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[9] The court noted that "parents who unilaterally place their child in an unapproved private school bear substantial risks," including the risk that the IEP offered by the public school will be found adequate or that the private school chosen by the parents will fail to provide an appropriate education—*i.e.*, one "reasonably calculated to enable the child to receive educational benefits." Pet. App. 17a, 18a-19a (quoting *Rowley*, 458 U.S. at 207). In either case, the panel noted, "the parents cannot receive reimbursement, whether or not the private school in question is state approved." Pet. App. 18a-19a.

INTRODUCTION AND SUMMARY OF ARGUMENT

In light of the Court's limited grant of certiorari, we take two aspects of this case as settled. First, as both courts below found, petitioners defaulted on their statutory responsibility under IDEA to provide Shannon Carter with a "free appropriate public education" (FAPE). Pet. App. 8a, 35a-36a. Second, as the courts also found, Shannon's educational program at Trident Academy was "appropriate" under the Act, in that it was reasonably calculated to provide Shannon with the level of educational benefits mandated by the Act. See *Rowley*, 458 U.S. at 206-207; Pet. App. 10a n.2, 29a, 37a. Thus, the narrow question for decision is whether the Act permits courts to order reimbursement for the costs of an "appropriate" private school program that fails to satisfy all the definitional criteria of a FAPE. See Sections 1401 (a)(18), 1412(1) (*reprinted at* Pet. App. 56a-58a).

In this case, the private school at which Shannon was educated admittedly did not meet all conditions imposed by Section 1401(a)(18). Trident did not comply with the state requirement that it employ only teachers certified to teach the disabled. See Pet. App. 71a-72a. It also did not formulate an IEP for Shannon. See Section 1401(a)(20). Nevertheless, the court below did not exceed its remedial authority by ordering tuition reimbursement for Shannon's education at Trident.

Under Section 1415(e)(2) of IDEA, which authorizes courts to "grant such relief as the court determines is appropriate," courts have broad discretion to remedy violations of IDEA. See *Burlington*, 471 U.S. at 369, 374. Courts may exercise that discretion by awarding any remedy that advances the statutory purpose, see *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 400 (1946), unless the statute, "in so many words," makes that relief unavailable. *California* v. *American Stores Co.*, 495 U.S. 271, 295 (1990).

Nothing in IDEA states that courts may award tuition reimbursement for costs incurred only at a private school

that meets state standards and utilizes the statute's IEP procedures. Section 1401(a)(18), which defines a "free appropriate public education," does not curtail the courts' discretion to order the relief that was awarded in this case. That provision lists conditions on the receipt of federal funds by state and local agencies, see Section 1412(1), not conditions on eligibility for reimbursement in the event that agencies fail to comply with the statute.

Conditioning the award of tuition reimbursement on the satisfaction of Section 1401(a)(18)'s requirements would be unjustified for the further reason that it would effectively burden parents with procedural duties that the statute explicitly imposes on state and local agencies. To ensure that their child's private school meets state standards and utilizes the statute's IEP procedures, parents would ordinarily need the assistance of the same public school authorities who have proposed the educational plan that the parents reject. Because, as this Court acknowledged in *Burlington*, 471 U.S. at 372, that assistance is unlikely to be forthcoming, requiring parents to demonstrate compliance with Section 1401(a)(18)'s requirements would in practice prevent many disabled children from vindicating their statutory right to a free appropriate public education.

Nor would any important statutory purpose be served by adopting petitioners' proposed restriction on the court's authority to award relief. The core objective of IDEA is to ensure that each disabled child receives an education that is "reasonably calculated to enable [him] to receive educational benefits." See *Rowley*, 458 U.S. at 206-207. Although Congress expected that the Act's procedural mandates (including the development of an IEP, and the incorporation of state educational standards) would foster that goal, compliance with statutory procedures is neither a necessary nor a sufficient means to that end. Thus, it is fully consistent with IDEA's underlying policies for a court, in fashioning relief, to look beyond the Act's

formal requirements, and to focus, instead, on whether the private school chosen by the parents met the child's educational needs.

In this case, the court found that Shannon's program at Trident satisfied the Act's substantive requirements, and that petitioners' proposed plan for Shannon's education did not. In these circumstances, the award of tuition reimbursement is necessary "to make good the wrong done." *Franklin* v. *Gwinnett County Public Schools*, 112 S. Ct. 1028, 1033 (1992) (quoting *Bell* v. *Hood*, 327 U.S. 678, 684 (1946)). If the award is barred, respondent will have received an empty victory, a result contrary to the congressional intent that this Court has recognized.

ARGUMENT

A COURT MAY ORDER A SCHOOL DISTRICT THAT HAS FAILED TO PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) TO REIMBURSE PARENTS FOR THE COSTS OF A DISABLED CHILD'S PRIVATE SCHOOL EDUCATION THAT MEETS THE CHILD'S EDUCATIONAL NEEDS BUT DOES NOT SATISFY THE PROCEDURAL REQUIREMENTS FOR A FREE APPROPRIATE PUBLIC EDUCATION UNDER SECTION 1401(a)(18) OF IDEA.

A. Nothing In IDEA Prohibits Courts From Exercising Their Broad Remedial Authority To Award Tuition Reimbursement For A Private School Education That Meets A Child's Educational Needs But Does Not Satisfy State Educational Standards Or Utilize The Statute's IEP Procedure

In IDEA, Congress authorized the federal courts to "grant such relief [for violations of the Act] as the court determines is appropriate," 20 U.S.C. 1415(e)(2). As this Court recognized in *Burlington*, 471 U.S. at 369, 374, this provision "confers broad discretion on the court" to evaluate "equitable considerations * * * in fashioning relief."

The relief available under this broad grant of authority must be examined in light of "equity practice with * * * several hundred years of history." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944). This Court has repeatedly stated that courts may exercise their equitable authority by awarding any established remedy that is calculated to advance the statutory purpose and is appropriate to the circumstances. *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 400 (1946); *Hall* v. *Cole*, 412 U.S. 1, 12-13 (1973); *California* v. *American Stores Co.*, 495 U.S. 271, 294 (1990). "The essence of equity jurisdiction" is "[f]lexibility rather than rigidity" and the power "to mould each decree to the necessities of the particular case." *Hecht Co.*, 321 U.S. at 329.

Moreover, limitations on a court's traditional powers in equity "should [not] be lightly implied." *Hecht Co.*, 321 U.S. at 330. "Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *American Stores Co.*, 495 U.S. at 295; see also *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982); *Porter*, 328 U.S. at 398, 403; *Hecht Co.*, 321 U.S. at 330 (where Congress seeks to make "an abrupt departure from traditional equity practice," it "ma[kes] its desire plain"). Thus, any relief "compatible with sound and established equitable principles" may be awarded absent "definitive and absolute" evidence that Congress has "set[] [its] face against [it]." *Hall* v. *Cole*, 412 U.S. at 12; cf. *Franklin* v. *Gwinnett County Public Schools*, 112 S. Ct. at 1032, 1034-1035 (availability of all appropriate remedies presumed "unless Congress has expressly indicated otherwise") (citing *Davis* v. *Passman*, 442 U.S. 228, 246-247 (1979)).

No provision of IDEA states that relief in the form of tuition reimbursement may be awarded only for the costs of an educational program that meets state standards or that uses the statute's IEP procedures. The provision authorizing the award of relief to persons aggrieved by

violations of the statute states only that such relief shall be granted "as the court determines is appropriate." Section 1415(e)(2). As the Court observed in *Burlington*, 471 U.S. at 369, "[t]he type of relief is not further specified, except that it must be 'appropriate' * * * in light of the purpose of the Act." And IDEA's structure and history show that its purpose is to provide disabled children with basic educational rights and benefits. See S. Rep. No. 168, 94th Cong., 1st Sess. 3 (1975) (Act's purpose was to "assure that full educational opportunities" would be made available to disabled children); *Rowley*, 458 U.S. at 200 (IDEA designed to provide disabled students with a "basic floor of opportunity"). As explained more fully below, categorically forbidding the award of reimbursement for costs incurred at a private school chosen by parents that fails to meet all criteria for a "free appropriate public education" would undermine, rather than advance, the statute's goals.

B. Conditioning The Award Of Tuition Reimbursement On A Private School's Satisfaction Of Section 1401(a)(18) Criteria Would Effectively Burden Parents With Procedural Duties That The Statute Explicitly Imposes On State And Local Agencies

1. To further the statute's objective of providing basic educational services, IDEA incorporates procedures "by which State and local educational agencies may be held accountable for providing educational services for all handicapped children." S. Rep. No. 168, *supra*, at 3. States must demonstrate, as a condition of receiving federal funds, that they have in effect a policy that guarantees disabled children an education that meets the criteria for a "free appropriate public education" in Section 1401(a)(18). See Section 1412(1). Local agencies wishing to receive funds must in turn formulate a plan for furnishing services to all eligible students, see Section 1414(a)(1)(C), and must "provide assurances" that they will comply with the statutory requirements for

formulating and reviewing IEPs, see Section 1414(a)(5); see also Section 1412(4) (State must provide assurances that the local educational agency or unit will establish and periodically review and revise IEP that meets statutory requirements). In addition, Section 1413(a)(4)(B) of the Act states that, when a State chooses to place a disabled child in a private facility "as the means of carrying out the requirements" of the statute, the State must determine whether the facility meets "standards that apply to State and local educational agencies."

Thus, the Act as a whole makes clear that state and local agencies—rather than the disabled child and his parents—are responsible for insuring that eligible children receive appropriate benefits. See S. Rep. No. 168, *supra*, at 4 ("[T]he Committee bill rests final responsibility upon the State Educational Agency for assuring that all handicapped children within the State receive a free appropriate public education."). Accordingly, it is on state and local educational agencies that the statute expressly places the burden of complying with procedural requirements respecting the provision of a free appropriate public education—including the obligations in Section 1401(a)(18) to utilize the IEP procedure and to satisfy state educational standards. The statute imposes no parallel obligation on parents who elect to enroll their children in a private school pending the outcome of a challenge to the State's educational plan. However, the result of forbidding courts to award reimbursement for unilateral private school placements that do not comply with the terms of Section 1401(a)(18) would be "to impose on private schools chosen by parents the whole panoply of duties that the Act imposes on the state." Pet. App. 16a. Because the statute does not require parents to ensure that their child's education is provided in compliance with the specific standards in Section 1401(a)(18), they should not be barred from obtaining relief that would otherwise vindicate statutory rights solely because of failure to comply with those criteria.

2. Petitioners nevertheless contend that the limitations they urge are necessary to avoid a statutory violation, because requiring them to provide reimbursement for the costs of an education that does not meet the statutory criteria for a FAPE has the effect of altering (and expanding on) their obligations under the statute. That argument, however, rests on the erroneous premise that, in remedying a statutory violation, a court sitting in equity may order a defendant to do only what the statute commands in the first instance. The relief fashioned by a court with broad remedial powers need not precisely match the terms of the statute that has been violated. On the contrary, as long as the statute does not expressly forbid it, a court may order any remedy that is necessary "to make good the wrong done," *Franklin* v. *Gwinnett County Public Schools*, 112 S. Ct. at 1033 (quoting *Bell* v. *Hood*, 327 U.S. at 684).[10]

Section 1401(a)(18) does not bar the remedy that was ordered in this case. That provision lists conditions on the receipt of federal funds by state and local agencies, see Section 1412(1), not conditions on eligibility for reimbursement to parents of their resulting costs in the event those agencies fail to comply with the statute. Thus, the provision's requirements do not serve to limit the circumstances under which victims of the agencies' default may be compensated. Cf. *Franklin* v. *Gwinnett County Public Schools*, 112 S. Ct. at 1032 (scope of

[10] Thus, although IDEA does not obligate States directly to provide an education that fails to "meet state standards," States that participate in IDEA nevertheless are on notice that, if they default on their statutory obligations, the statute authorizes the award of any equitable remedy that would advance the statute's purpose—including reimbursement for a program that does not meet state standards. Therefore, there is no force to the claim, see Brief Amicus Curiae, National League of Cities, et al. [hereinafter NLC], at 23-25, that the court of appeals' remedy amounts to the "imposition of a new, unexpressed condition of federal funding" in contravention of the rule in *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1 (1981).

remedies available for a statutory violation is analytically distinct from the question of the parties' primary obligations under a statute).

In *Burlington*, *supra*, this Court recognized that parents and school authorities bear different obligations under the statute, and that IDEA's requirements should not be construed to limit the availability of relief in a manner that would do violence to the parties' respective roles within the statutory scheme. In defining the permissible scope of equitable relief for a local school district's violation of IDEA, the Court rejected a town's argument that parents were barred from receiving tuition reimbursement because, in moving their child to a private school without consulting school officials, they had violated the terms of 20 U.S.C. 1415(e)(3). That provision states that, during the pendency of proceedings under the statute, a child "shall remain in the then current educational placement of such child" unless the "State or local educational agency and the parents or guardian otherwise agree." See 471 U.S. at 365. Although acknowledging that the literal terms of Section 1415(e)(3) were "violated" when the parents unilaterally moved their child, the Court nevertheless refused to rule that the violation barred the parents from receiving remedial compensation for the costs of the alternative placement. In so concluding, the Court observed that Section 1415(e)(3) "says nothing about financial responsibillty, waiver, or parental right to reimbursement." 471 U.S. at 372. Moreover, although Section 1415(e)(3) literally barred transfer of the child without the school district's "agreement," the Court construed that provision in light of its purpose, which "was to prevent school officials from removing a child from the regular public school classroom over the parents' objection." 471 U.S. at 373. The Court further observed that the provision was in a Section "detailing procedural safeguards which are largely for the benefit of the parents and the child." *Ibid.* Because Section 1415(e)(3) was primarily designed to protect children and parents

from the unilateral action of school authorities, the Court concluded that it should not be read to impose an inflexible limit on the circumstances under which courts could remedy school authorities' violations of statutory rights.

Similarly, in this case, the provision on which petitioners rely, Section 1401(a)(18), says nothing about "financial responsibility, waiver, or parental right to reimbursement," nor does it make securing services that meet the specified criteria a condition for receiving relief. Moreover, the procedural safeguards in Section 1401(a)(18), like those in the statutory provision at issue in *Burlington*, "are largely for the benefit of the parents and the child." See *Burlington*, 471 U.S. at 373; see also *id.* at 368. By effectively requiring parents to secure compliance with a range of obligations that the statute imposes on States, the categorical rule proposed by petitioner would convert statutory requirements designed to safeguard the rights of parents and disabled children into obstacles to the vindication of those rights.

C. Depriving Parents Of The Opportunity To Receive Reimbursement For The Costs Of A Private School Education That Fails To Satisfy The Definitional Criteria Of Section 1401(a)(18) Would Unjustifiably Frustrate The Statute's Goal Of Providing Disabled Children With A Free Appropriate Public Education

1. Not only are petitioners' proposed conditions on relief not to be found in the statute, but they should not be adopted for other reasons: Because parents would frequently be unable to meet the conditions, violations of the Act would often go unremedied.

The relevant equitable considerations are similar to those the Court discussed in *Burlington*. Pending the outcome of their ultimately successful challenge to the school district's proposed educational program, the parents in that case withdrew their disabled child from the public school system and placed him in a private school that was generally authorized for such placements by the

State. 471 U.S. at 362-363. In rejecting the argument that the parents' failure to obtain the school district's permission to change the child's placement barred reimbursement, see pp. 15-16, *supra*, the Court explained that, if the parents' failure to obtain approval were held to bar relief, "the principal purpose of the Act will in many cases be defeated in the same way as if reimbursement were never available." 471 U.S. at 372. That is because school officials who disagree with parents concerning the adequacy of the official educational placement are unlikely to "agree to an interim private school placement while the review process runs its course." *Ibid.* If such agreement is not forthcoming, parents will be

> forced to leave the child in what may turn out to be an inappropriate placement or to obtain the appropriate placement only by sacrificing any claim for reimbursement. The Act was intended to give handicapped children both an appropriate education and a free one; it should not be interpreted to defeat one or the other of those objectives.

Ibid.

In this case, unlike *Burlington*, 471 U.S. at 362-363, the private school in which the parents placed Shannon did not meet state educational standards, nor did it otherwise satisfy the terms of Section 1401(a)(18).[11] If tuition reimbursement were categorically unavailable under these circumstances, however, Shannon's parents would be faced with essentially the same untenable choice posed in *Burlington*: that of procuring an appropriate education for their disabled child only at the cost of forgoing a free one. As respondent points out, see Br. in Opp.

[11] Although it is clear from the opinion in *Burlington* that the private school at issue in that case met state educational standards, the Court did not explicitly address the question of whether the school complied with other statutory requirements for the provision of a FAPE, such as the formulation of an IEP for each disabled student.

23-24, and petitioners do not dispute, South Carolina does not maintain a list of schools approved for the education of the disabled, and there is no official process by which private schools can obtain state approval. Nor is there any established mechanism by which parents can ascertain whether a private school meets the "standards of the State educational agency." See Br. in Opp. 22-24 (citing S.C. Code Regs. § 43-243E (1982)).[12]

In practice, then, parents would be forced to seek assistance from the very educational agency that has proposed a program that the parents have found wanting. However, as suggested in *Burlington*, educational agencies cannot ordinarily be expected to assist parents in rejecting a plan that the agency has proposed by helping parents to assess a private school's compliance with "voluminous" state and statutory requirements. See Br. in Opp. 24. It is even less likely that parents will routinely secure official help in meeting the other definitional elements of a FAPE, including the requirement that the education be provided "under public supervision and direction" and "in conformity with the individualized education program required under section 1414(a)(5)."[13] Section 1401

[12] IDEA permits States or local educational agencies to fulfill their obligations under the Act by placing disabled students in private educational institutions in lieu of public schools. See Section 1413(a)(4)(B). See p. 13, *supra*. It is only in this setting that the South Carolina regulations implementing IDEA provide for state evaluation and approval of a private school for the placement of a disabled child. See Br. in Opp. 22-23 (quoting S.C. Code Regs. § 43-243E (1982)).

[13] The Act explicitly defines an IEP as a plan developed by the local agency with the collaboration of parents and teachers, see Section 1401(a)(20), and commands the agency to "establish," "revise," and periodically "review" the IEP. See Section 1414(a)(5); Section 1401(a)(18)(D). Thus, petitioners' rule would make parents responsible for the private school's production of a detailed educational plan in cooperation with, and under the supervision of, the local educational agency, and for the agency's periodic review and revision of such a plan. See Pet. Br. 17 (arguing against

(a)(18)(A) and (D). As in *Burlington*, the parents' right to obtain a free appropriate education for their child would be held hostage to the state or local agency's willingness to cooperate with parents in identifying a suitable alternative placement and in satisfying statutory requirements for the development of an educational plan.[14] In

reimbursement for special education that "fails to utilize the IEP process"). However, as this Court recognized in *Burlington*, 471 U.S. at 372, state and local education officials who disagree with parents over the placement of a disabled child are unlikely to provide ongoing "supervision and direction" over that child's education in the private institution chosen by the parents or to participate in annual revisions of the child's IEP. These considerations corroborate our view (see pp. 12-13, *supra*) that it is the state or local educational agency, and not the parents, that must satisfy the various elements of Section 1401(a)(18).

Amicus NLC, see Br. at 9 n.6, admits that the statutory definition of an IEP contemplates that local school authorities will take part in its formulation and review. It follows that parents cannot satisfy the statute's terms unless they arrange for public school officials to collaborate with teachers from their chosen private institution in developing an IEP for their child. NLC acknowledges that, as a practical matter, "this collaboration will not be possible." *Id.* at 10 n.6. However, in an effort to avoid requiring parents to do the impossible, NLC suggests that it suffices for parents and private schools to develop an IEP on their own, without the input of public school authorities. In a strained attempt to preserve a wholly artificial limit on the court's remedial authority, amicus NLC thus arbitrarily rewrites the statute to eliminate the pivotal role of public educational authorities in the IEP process.

In any event, even if the statute could appropriately be construed to permit parents to work exclusively with private school authorities in developing an IEP, that requirement would still pose a significant obstacle to the vindication of rights under the Act. Entitlement to relief would hinge on whether private school authorities were willing, or able, to cooperate with parents in meeting the statute's elaborate requirements. The courts' authority to remedy IDEA violations should not turn on such vicissitudes, which have little to do with vindication of the Act's core objectives. See pp. 21-23, *infra*.

[14] Amicus NLC, see Br. at 18, suggests that there is no need for parents to rely on assistance from state or local educational agen-

this setting, it would defeat the remedial purposes of the Act "to impose on private schools chosen by parents the whole panoply of duties that the Act imposes on the state." Pet. App. 16a. Thus, petitioners' proposed conditions on relief would in practice prevent many disabled children from vindicating their statutory right to a free appropriate public education.

2. In the absence of an express statutory provision that makes compliance with state standards and IEP procedures a prerequisite to the award of tuition reimbursement, that limitation should not be inferred without compelling justification. The justifications proposed by petitioners fall far short of that standard.

i. Petitioners claim (Pet. Br. 24) that permitting parents to select their child's school without "the input of state officials" runs contrary to the statute's "spirit of cooperation and consultation" between parents and public school authorities. See also *id.* at 22-25. However, the statute provides school officials with an ample opportunity to consult with parents concerning each disabled child's educational program: the statute contemplates that parents will participate in the school district's formulation of an IEP in the first instance, see Section 1401(a)(20), and parental refusal to participate in that process could undermine any future claim for relief, see note 16, *infra*.

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cies to determine whether a private school meets state educational standards, because private schools have a financial incentive to provide this information to interested parents. Although some schools might be able to furnish parents with information concerning compliance with state standards, others may be unwilling or financially unable to do so. Moreover, some schools may choose not to devote scarce resources to compliance with the full range of state standards or the development of IEPs. See note 13, *supra*. In any event, the problem in this case was not information, but availability. The district court noted that there was no evidence that "Shannon could have received the special educational services provided by Trident at any facility closer to her home or at a lower cost." Pet. App. 30a. Thus, there was no indication that the parents could have found a local institution that satisfied the requirements of Section 1401(a)(18).

If, after having engaged in such consultations, parents nevertheless opt out of the proposed program, it must be assumed that they disagree with the school district's views concerning the education of their child. Under these circumstances, calling upon parents to confer again with officials about what is best for their child would not appreciably advance the goal of cooperation between public school authorities and parents.

ii. Petitioners also complain that forcing States to use public funds for programs that "ignore state educational standards" will "undermine[] the role of the States as the primary educational authority." See Pet. Br. 22, 24; *id.* at 22-26. However, petitioners' insistence that school districts be exempted from reimbursing parents for programs that fall short of state standards loses sight of the objectives of IDEA and elevates form over substance. Implicit in this Court's discussion in *Rowley*, 458 U.S. at 200-201, is the understanding that the ultimate objective of IDEA is to provide each child with a "basic floor of [educational] opportunity." That goal is met if a child receives an education that is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 207; *id.* at 200-201, 203; see also *Roland M.* v. *Concord School Committee*, 910 F.2d 983, 991 (1st Cir. 1990) ("Congress indubitably desired effective results and demonstrable improvement for [IDEA's] beneficiaries."), cert. denied, 111 S. Ct. 1122 (1991).

The *Rowley* Court distinguished between the substantive goal of ensuring that each disabled child receives a minimally adequate education, and "the procedures set forth in [IDEA]," which are prescribed, not for their own sake, but as a means to achieve that end. 458 U.S. at 206-207. As the Court acknowledged in *Rowley*, Congress's design for IDEA arose from a "legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." 458 U.S. at 206. However, even though

Congress expected that the mandated procedures (including the development of an IEP, and the incorporation of state standards) would foster achievement of the Act's substantive goals, compliance with statutory procedures is neither a necessary nor a sufficient means to that end. It is thus entirely proper—and fully consistent with IDEA's underlying policies—for a court, in fashioning equitable relief, to look beyond the Act's formal requirements, and to focus, instead, on whether the Act's objectives were actually achieved—that is, whether the education the child received through the parent's efforts was "reasonably calculated to enable the child to receive educational benefits." [15] If, in a particular case, the child's education meets that standard, it would not further advance the statutory purpose to demand compliance with all procedural requirements as well.

Because parents must show that the education the child received is "appropriate" under the Act, reimbursement will not be forthcoming in every case in which the State defaults under IDEA. Parents who elect to move their child to a private school of their own choosing risk bearing the costs of the education if the program the school offers is found to be inadequate. In our view, however, reimbursement should ordinarily be available to parents who can demonstrate that the placement offered by school authorities was inadequate under the Act, and that their child received an education that met the Act's substantive standards.[16] Respondent has fulfilled both of these condi-

[15] It is thus entirely proper for a court to demand that the private school program for which the parents seek reimbursement satisfies the Act's substantive standards. Permitting reimbursement for an educational program that was not reasonably calculated to benefit the child would undermine parents' incentive to select a minimally adequate program, and would defeat the Act's core purpose of providing each disabled child with a "basic floor of opportunity."

[16] This is not to say that other equitable considerations will never be relevant to the remedy fashioned by the court even where the core conditions are satisfied. "[T]he courts possess extensive powers to tailor remediation [for violations of IDEA] to meet the exigencies of specific cases." *Roland M.* v. *Concord School Committee*, 910 F.2d at 999; see also *Alamo Heights Indep. School Dist.*, 790 F.2d 1153, 1161 (5th Cir. 1986); *Town of Burlington* v. *Department of Educ.*, 736 F.2d 773, 801-802 (1st Cir. 1984), aff'd, 471 U.S. 359, 374 (1985); *Carrington* v. *Commissioner of Educ.*, 535 N.E.2d 212, 216 (Mass. 1989). In our view, a court may take into account such factors as the parties' good faith, the overall reasonableness of their conduct (including the reasonableness, in the circumstances, of the expenses incurred), and whether each fulfilled its procedural obligations under the statute. (For example, parents' failure to cooperate with the State's initial efforts to develop a satisfactory IEP would be relevant.) In this case, the equitable factors, on balance, favor relief for respondent.

tions. See Pet. App. 37a; *id.* at 17a; *id.* at 10a n.2.[17] In these circumstances, the award of tuition reimbursement is necessary "to make good the wrong done." *Franklin* v. *Gwinnett County Public Schools*, 112 S. Ct. at 1033 (quoting *Bell* v. *Hood*, 327 U.S. at 684). If that award is barred, respondent will have received an empty victory, a result contrary to the congressional intent that this Court has recognized.

3. Observing that Shannon's parents "made no inquiries of public school authorities prior to enrolling Shannon in Trident," petitioners alternatively argue (Pet. Br. 25 & n.22) that courts should not award reimbursement for the costs of a placement that falls short of statu-

[17] Amicus NLC, see Br. at 11-13, contends that, under *Burlington*, a substitute educational placement is "proper under the Act," and thus eligible for retroactive reimbursement, only if the court could have enjoined the school district to provide that placement prospectively. Although the Court in *Burlington* did observe that the private school education obtained by the parents in that case was one that the court could have ordered the school district to provide directly, the Court did not state or suggest that reimbursement would have been barred unless that condition were met. As we have discussed, it would be inconsistent with the statute's objectives—indeed it would undermine them—to impose that restriction on the courts' authority to order relief.

tory standards unless parents have at least sought public school authorities' assistance in complying with Section 1401(a)(18), and have demonstrated the authorities' bad faith "refus[al] to cooperate." In taking this position, petitioners implicitly concede that compliance with the core requirements for a FAPE is not an inflexible prerequisite to an award of private school costs; the balance of equities may favor relief even when the alternative educational placement fails to meet Section 1401(a)(18)'s requirements. See Pet. Br. 25 n.22.

Petitioners' proposal simply replaces one inflexible rule with another. Like the requirement that the private school unilaterally chosen by parents meet the criteria of Section 1401(a)(18), the requirement that parents demonstrate school authorities' "bad faith" as a condition on reimbursement is not to be found in the statute. In the absence of any textual justification for circumscribing the courts' remedial authority in this manner, traditional equitable concerns, rather than petitioners' categorical test, should govern the availability of relief.

The balance of equities does not favor petitioners' proposal, which creates new hurdles to relief without advancing any important statutory interests. By injecting into the remedial phase a host of issues concerning the sufficiency of parents' efforts, and the adequacy of the official response, petitioners' proposed rule would needlessly complicate litigation and facilitate the defeat of parents' legitimate claims.[18] Because requiring parents to demonstrate, as a condition of relief, that their child received an appropriate education fully vindicates the statute's core objec-

[18] Even if public school authorities agreed to cooperate with parents in formulating an IEP, or even if, as Amicus NLC suggests, see note 13, *supra*, public school authorities would not be required to participate at all, defendants would still have the opportunity to seek to obstruct parents' claims for reimbursement by objecting to technical lapses in compliance with the statutory procedures respecting IEPs.

tives, asking that they also demonstrate attempts to comply with statutory procedures is no more justified than demanding that they actually prove compliance.

4. This case does not present the situation in which parents have ready access to information concerning private schools that meet state educational standards or that are approved by the State for the education of the disbled. See, *e.g.*, *Tucker* v. *Bay Shore Union Free School Dist.*, 873 F.2d 563, 568 (2d Cir. 1989).[19] Nor did the parents in this case knowingly reject a private placement that met state standards in favor of one that did not. See, *e.g.*, *Matta* v. *Board of Educ.-Indian Hill Exempted Village Schools*, 731 F. Supp. 253, 258 (S.D. Ohio 1990). Although we do not believe that parents' failure to select a program known to be approved by the State in favor of an unapproved option should, in itself, bar reimbursement in the event of the State's default, there are circumstances in which the parents' refusal to defer to the State's educational judgment could come into play in fashioning relief.

For example, if the institution in which the parents placed the child provided services that were considerably more elaborate or more expensive than those available in an otherwise appropriate state-approved institution, a court might be justified in limiting the amount of the award to the cost of the state-approved alternative. Cf. also *Drew P.* v. *Clarke County School Dist.*, 877 F.2d 927, 931 (11th Cir. 1989) (court awarded only part of plaintiffs' costs for expensive residential program in Japan even though there was no "appropriate facility within the state"), cert. denied, 494 U.S. 1046 (1990). Also,

[19] Of the 27 States that have provided information to the Solicitor General concerning programs for disabled children within their jurisdictions, 16 have informed us that they maintain a publicly available list of state-approved private programs. The remaining 11 States do not compile a list, nor have they established a mechanism by which parents can readily identify private programs that meet state educational standards.

there are circumstances in which the parents' rejection of an institution that complies with state standards in favor of one that does not might be a factor in the court's assessment of whether the chosen program was educationally adequate. In this case, Shannon's dramatic and steady academic progress at Trident left little doubt that the school's program was designed to meet her educational needs. In other cases, however, the academic results achieved by the private school may be equivocal, and the "appropriateness" of a program will be difficult to assess. See, *e.g.*, *Rowley*, 458 U.S. at 192 (noting that Congress recognized that "in many instances the process of providing * * * services to handicapped children is not guaranteed to produce any particular outcome"); see also *Matta*, 731 F. Supp. at 259 (noting mixed results of disabled child's private school experience).

In the absence of clear educational progress, courts might have to consider indirect evidence of educational quality. Such evidence would include the degree to which the school adheres to sound educational practice as reflected in compliance with state standards for the education of the disabled or the requirements of IDEA. See, *e.g.*, Pet. App. 37a (noting that, although Trident did not follow IDEA to the letter, it "provided Shannon with low teacher-student ratios" and evaluated Shannon on a regular basis). Specifically, a court would be entitled to give weight to Congress's considered judgment, as embodied in Section 1401(a)(18) of IDEA, that compliance with state educational standards tends to enhance the quality of an educational program. Thus, in situations where an appropriate program certified as meeting state standards was available, a court might, in some circumstances, be justified in denying reimbursement for the costs of an alternative program chosen by the parents that was judged inappropriate partly because it failed to meet important state standards.[20]

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[20] A similar analysis would apply to the court's consideration at the remedial phase of other procedural obligations imposed on the States by IDEA—such as the "mainstreaming" requirement. See note 1, *supra*; NLC Br. at 20. Although the statute does not directly impose on parents an obligation to see to it that their child is "mainstreamed"—so that the choice of a placement that does not use this method would not, in itself, bar reimbursement in the event of a school district's breach—the incorporation of Section 1412(5)(B) nevertheless represents a congressional judgment that disabled children will ordinarily benefit from integration into regular classrooms. A court could take that judgment into account in assessing the "appropriateness" of a private school education of otherwise uncertain quality that did not practice mainstreaming, especially if an appropriate program that did use mainstreaming was available to the parents.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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